

BEFORE THE CANNABIS CONTROL DIVISION
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Case No. 2024-001

Blue Whale Enterprises Inc.,
License No. CCD-2023-0214, CCD-2023-0393,
& CCD-VICE-2024-0008,

Respondent(s).

NOTICE OF CONTEMPLATED ACTION

TAKE NOTICE that the Superintendent of the Regulation and Licensing Department (“Department”) and the Cannabis Control Division (“Division”) is contemplating taking disciplinary action against the license held by Blue Whale Enterprises Inc. (“Respondent”). The Department and the Division have before them sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify the Department and the Division revoking, suspending, issuing fines, or taking other disciplinary action against the Respondent’s license. If Respondent does not request a hearing within twenty days after service of this Notice of Contemplated Action (“Notice”), the Department and the Division will proceed to take the action contemplated in this Notice, and such action will be final and not subject to judicial review. Respondent may also request a settlement conference to determine whether a compromise of the penalty may be reached.

APPLICABLE LAW

1. Respondent is licensed pursuant to the Cannabis Regulation Act (“CRA”), NMSA 1978, Sections 26-2C-1 to -42 (2021), and as such is subject to the jurisdiction of the Department and Division. The Department and Division have jurisdiction over this disciplinary action pursuant to the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 to -36 (1957, as amended through 2021).
2. This Notice is based upon the following alleged statutory or regulatory violation(s):

VIOLATION #1: Violation of Protection of Underage Persons

RULE CITATION OF VIOLATION: 26-2C-14 NMSA 1978

DESCRIPTION OF VIOLATION #1 AS IT PERTAINS TO RULE:

Licensees shall not allow a person under twenty-one years of age to consume cannabis products on the licensed premises. Respondent did not check for identification on its licensed premises during its Grand Opening event. During the event, a minor without a valid qualified patient card was identified via the Albuquerque Journal as being present on-site and consuming cannabis. Respondent allowed such activity by not prohibiting public consumption at its Grand Opening event.

VIOLATION #2: Engaging in Prohibited Practices

RULE CITATION OF VIOLATION: 16.8.3.8 (B)(8)(9) NMAC

DESCRIPTION OF VIOLATION #2 AS IT PERTAINS TO RULE:

Licensees shall not promote the over consumption of cannabis or cannabis products; or depict the actual consumption of cannabis or cannabis products. Respondent posted on its social media platforms images of persons present at its Grand Opening event, located on its licensed premise, consuming large amount of cannabis.

VIOLATION #3: Allowing for the Unauthorized Consumption of Cannabis

RULE CITATION OF VIOLATION: 16.8.2.8 (D) NMAC

DESCRIPTION OF VIOLATION #3 AS IT PERTAINS TO RULE:

Licensees shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division. Respondent allowed for and promoted public cannabis consumption on its licensed premise without a cannabis consumption license during its Grand Opening event.

VIOLATION #4: Unlawful Co-Mingling of Alcoholic Beverages and Cannabis

RULE CITATION OF VIOLATION: 16.8.2.8 (F) NMAC, 26-2C-6(I), (J) NMSA 1978.

DESCRIPTION OF VIOLATION #4 AS IT PERTAINS TO RULE:

Licensees are allowed to engage in any combination of lawful activities in conjunction with cannabis activity. Public consumption of liquor requires a license issued pursuant to the Liquor Control Act. *See*, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B and 8A of Chapter 60 NMSA 1978. Respondent allowed public consumption of alcohol on its licensed premise during its Grand Opening event.

VIOLATION #5: Violation of Cannabis Product Display Requirements

RULE OF CITATION OF VIOLATION: 16.8.2.40 (F) NMAC

DESCRIPTION OF VIOLATION #5 AS IT PERTAINS TO RULE:

Licensees shall only display cannabis and cannabis products in the retail area of the licensed premise. Respondent had cannabis and cannabis products on display in the parking lot of its licensed premise.

SUMMARY OF THE EVIDENCE AGAINST RESPONDENTS

3. The general nature of the evidence before the Division is as follows:
 - a. Photographic evidence collected by CCD staff conducting inspections;
 - b. Inspection checklists created by CCD staff;
 - c. Testimony by CCD conducting investigations;
 - d. Testimony by witnesses present;
 - e. News article by the Albuquerque Journal;
 - f. Publicly available social media posts by Respondent and members of the public;
 - g. Depositions of persons present during Grand Opening event; and
 - h. Date of birth of minor participating in Grand Opening festivities.

RIGHTS AND OBLIGATIONS OF RESPONDENT

4. **Unless Respondent requests a formal hearing, the evidence before the Division is sufficient to justify the Division in taking the contemplated action.**
5. The formal hearing, if requested, will be conducted pursuant to the ULA as provided by Section 61-1-8. Section 61-1-8 provides that:
 - A. A person entitled to be heard under the Uniform Licensing shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the Division or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the Division or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.
 - B. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No request shall be made less than fifteen days before the hearing.

- C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.
6. **If Respondent does not request a hearing in this matter, the Division will take the contemplated action by default. See § 61-1-4(D)(3). If no hearing is requested, this disciplinary action will not be subject to judicial review. See § 61-1-4(E).**
7. To request a hearing in this matter Respondent must deposit in the mail a certified return receipt requested letter addressed to the Division containing a request for a hearing within twenty days after services of this notice. See § 61-1-4(D)(3). A written request for a hearing should be sent to the following address:

Robert Sachs, Deputy Director of Policy
Cannabis Control Division
2550 Cerrillos Road
Santa Fe, NM 87505



Clay Bailey, Superintendent
Cannabis Control Division

Prepared by:

Robert Sachs
Deputy Director of Policy
Cannabis Control Division, Regulation and Licensing Department
1209 Camino Carlos Rey
Santa Fe, NM 87504
Robert.Sachs@rld.nm.gov
(505) 948-8609

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy the foregoing was mailed to Respondent by United States Postal Service Certified Mail, return receipt requested, on this 8th day of April 2024 to the following:

Blue Whale Enterprises Inc.,
1340 Broadway Blvd. NW
Albuquerque, NM 87102

Certified Mail No: 9589 0710 5270 0497 0262 69
Return Receipt Requested

Blue Whale Enterprises Inc.,
1604 Torribio Dr. NE
Albuquerque, NM 87112

Certified Mail No: 9589 0710 5270 0497 0262 52
Return Receipt Requested

I hereby certify that a true and correct copy of the forgoing was e-mailed, on this 8th day of April 2024 to the following:

Blue Whale Enterprises Inc.,
Respondent
Email: bbyron505@gmail.com

By: Victoria Kaniatobe
Victoria Kaniatobe
Legal Clerk
Cannabis Control Division